



MAIL STOP APPEAL
BRIEF - PATENTS

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicants: A.R. Cohn et al. Attorney Docket No. LIUI117961
Application No.: 10/047,523 Group Art Unit: 3652
Filed: October 25, 2001 Examiner: S.A. Bratlie
Title: WHEELCHAIR LIFT ASSEMBLY HAVING A LIFT ARM SUPPORT

TRANSMITTAL OF APPEAL BRIEF

Seattle, Washington 98101
June 28, 2004

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GROUP 3600

TO THE COMMISSIONER FOR PATENTS:

Enclosed herewith for filing in the above-identified application is an Appeal Brief in triplicate. The enclosed check includes the filing fee of \$165.00.

Applicant respectfully requests that the period of time for filing Applicant's Appeal Brief set to expire January 26, 2004, be extended by five (5) months, to expire on June 26, 2004 (Saturday). The enclosed check includes the 5-month extension fee of \$1005.00.

Enclosed is our Check No. 156377 in the amount of \$1170.00 to cover the filing fee and request for extension of time fee

The Commissioner is hereby authorized to charge any fees under 37 C.F.R. §§ 1.16, 1.17 and 1.18 which may be required during the entire pendency of the application, or credit any overpayment, to Deposit Account No. 03-1740. This authorization also hereby includes a request for any extensions of time of the appropriate length required upon the filing of any reply during the entire prosecution of this application. A copy of this sheet is enclosed.

Respectfully submitted,
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I hereby certify that this correspondence is being deposited with the U.S. Postal Service in a sealed envelope as first class mail with postage thereon fully prepaid and addressed to Mail Stop Appeal Brief - Patents, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on the below date.

Date: JUNE 28, 2004

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07/06/2004 AWONDAF1 00000147 10047523

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BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

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APPELLANT'S APPEAL BRIEF

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GROUP 3600

TO THE COMMISSIONER FOR PATENTS:

This brief is in support of a Notice of Appeal filed in the above-identified patent application to the Board of Patent Appeals appealing the decision of May 28, 2003, wherein Claims 1-23 were finally rejected.

The fees required under § 1.17, and any required petition of extension of time for filing this brief and fees therefor, are dealt with in the accompanying Transmittal of Appeal Brief.

This brief is transmitted in triplicate.

07/06/2004 AWONDAF1 00000147 10047523

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I. REAL PARTY IN INTEREST

The real party in interest in the above-identified patent application is the assignee, Lift-U, Division of Hogan Mfg., Inc., a California corporation, having a principal place of business at 1520 1st Street, P.O. Box 398, Escalon, California 95320.

II. RELATED APPEALS AND INTERFERENCES

None.

III. STATUS OF THE CLAIMS

Claims 1-23 were filed in the above-identified patent application. All claims stand finally rejected under 35 U.S.C. § 103(a) and, therefore, are subject to this appeal. A copy of the claims on appeal is included herewith as Appendix A.

IV. STATUS OF AMENDMENTS

The subject patent application was filed on October 25, 2001, based on U.S. Provisional Application No. 60/243,331, filed on October 25, 2000. An amendment and response was filed on August 30, 2002, in response to a first Office Action mailed April 30, 2002. The amendment and response was entered. On April 28, 2003, an RCE and response was filed in reply to a final Office Action, mailed on October 28, 2003. No amendment has been entered in response to a second final Office Action mailed on May 28, 2003.

V. SUMMARY OF THE INVENTION

As is set forth in Claim 1, the present application is generally directed to a wheelchair lift assembly (22) that includes first and second attachment arm assemblies (26a and 26b) extending between a reciprocating platform (24) and a lift platform (28). (Page 4, lines 26-27.) The lift platform (28) is held in a substantially horizontal first plane as the lift platform (28) is moved between raised and lowered positions. (Page 6, line 26 through Page 7, line 4.) The wheelchair lift assembly (22) also includes a support device (20) coupled to one of the first and second

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attachment arm assemblies (26a and 26b) for supporting one of the first and second attachment arm assemblies (26a and 26b) and *maintaining* the lift platform in a second plane substantially parallel to the first plane if at least a portion of the other of the first and second attachment arm assemblies (26a and 26b) fails. (Page 7, lines 5-20.)

As a non-limiting example and for descriptive purposes only, if one of the balance arm pin 44 fails, the lift platform 28 is maintain level by the balance arm located on the opposite side of the life platform 28. (Page 7, lines 5-12.) Although the lift platform 28 may drop slightly from its original supported position, the support device 20 maintains the lift platform 28 in a plane substantially parallel to its original horizontal plane. (Page 7, lines 13-20.)

VI. ISSUES PRESENTED FOR REVIEW

Whether Claims 1-23 are patentable under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 2,732,960, issued to Nilson, in view of U.S. Patent No. 5,556,250, issued to Fretwell et al., U.S. Patent No. 3,700,123, issued to Corley, Jr., and Japanese Patent No. 457685, issued to Torii.

VII. GROUPING OF CLAIMS

All of the pending claims set forth in Appendix A share certain points of patentability over the cited references. For example, each of the claims is directed to a wheelchair lift assembly that includes first and second attachment arm assemblies extending between a lift platform and a reciprocating platform, where the lift platform is held in a substantially horizontal first plane as the lift platform is moved between at least raised and lowered positions. However, while all of the claims share certain characteristics in common, each of the claims is believed to be separately patentable on the basis of the differences as noted in the arguments below.

For example, each of Claims 1-10 is directed to a wheelchair lift assembly that includes a support device coupled to one of the first and second attachment arm assemblies, where the

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support device supports one of the first and second attachment arm assemblies and maintains the lift platform in a second plane substantially parallel to the first plane if at least a portion of the other of the first and second attachment arm assemblies fail. Claims 11-14 are generally directed to a wheelchair lift assembly that includes support means extending between a portion of the first and second attachment arm assemblies for supporting one of the first and second attachment arm assemblies and maintaining the lift platform in a plane substantially parallel to a horizontal plane if at least a portion of the other of the first and second attachment arm assemblies fail. Finally, Claims 15-23 are generally directed to a wheelchair lift assembly that includes a support apparatus coupled to a reciprocating assembly for supporting the reciprocating assembly and maintaining the lift platform in a second plane substantially parallel to a first plane if at least a portion of the reciprocating assembly fails.

For these reasons, and other differences addressed below and contained in the claims, each claim is believed to stand separately.

VIII. ARGUMENT

Currently, Office Action, Claims 1-23 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 2,732,960, issued to Nilson, in view of U.S. Patent No. 5,556,250, issued to Fretwell et al., U.S. Patent No. 3,700,123, issued to Corley, Jr., and Japanese Patent No. 457685, issued to Torii. The final Office Action sets forth the position that Nilson discloses a substantially similar lift having parallel arms 24 and 29 and a support member 32. Fretwell et al. has been cited for the purpose of establishing use of a similar lift for a wheelchair. The final Office Action admits that Nilson lacks a U-shaped support bracket. Corley, Jr., has been cited as disclosing U-shaped brackets 35 and 36 at the ends of parallel arms. The final Office Action sets forth the position that it would have been obvious to substitute a U-shaped bracket as taught by Corley, Jr., "if so desired." Applicants respectfully disagree.

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Applicants respectfully submit that the final Office Action has failed to establish a *prima facie* case of obviousness. To establish *prima facie* obviousness of a claimed invention, all claim limitation must be taught or suggested by the prior art. *In re Royka*, 490 F2d 981, 180 U.S.P.Q. 580 (CCPA 1974). Thus, as the PTO recognizes in MPEP § 2143.03, all claim limitations must be taught or suggested by the prior art. Applicants submit that none of the references cited in the final Office Action teach or suggest a support device "supporting one of the first and second attachment arm assemblies and *maintaining the lift platform in a second plane substantially parallel to the first plane if at least a portion of the other of the first and second attachment arm assemblies fails.*" Such a claim limitation is generally set forth in independent Claims 1, 11, and 15 as originally filed.

Nilson, the primary reference, generally discloses a loading device for a vehicle that includes a pair of members 24 pivotally attached to a frame 20. Extending between the members 24 is a cross-member 32. Nilson expressly teaches that the cross-member 32:

"[A] assists in keeping the various elements 24 and 29, etc., in direct alignment as shown in Figure 6 and substantially at this point through the rigidifying [sic] affect of these members when the pivotal points are on dead center."

Thus, Nilson expressly teaches that the cross-member 32 is for alignment and stiffening of various elements of the lift. Note that there is no teaching or suggestion within Nilson of either the need or desire to include supports whether it is a U-shaped bracket or any other type of support device. Thus, if one of the attachment pins 25 or 30 attaching the platform 26 to either one of the attachment arms 24 and 29, the platform 26 would pivot about the other remaining attachment pin 25 or 30. As an example, if the pin 25 failed, then the platform 26 would pivot about the attachment pin 30. Modifying Nilson, as suggested by the final Office Action, to include certain aspects of Fretwell et al., Corley, Jr., or Torii fails to teach or suggest the embodiments of Claims 1, 11, and 15.

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Fretwell et al. disclose a wheelchair lift that includes a rod 22 located and extending parallel to sides of lifting arms 21. The rod 22 and lifting arms 21 are pivotally attached to a platform 28 by pivot pins 2 and 24. Note that there is no teaching or suggestion within Fretwell et al. of either a support device or support beams for maintaining the lift platform in a second plane substantially parallel to a first plane if at least a portion of the other of the first and second attachment arm assembly fail, as generally set forth in Claims 1, 11, and 15. In fact, should either one of the attachment pins 2 or 24 fail, the platform 28 would pivot about the other remaining attachment pin. As an example, should the attachment pin 2 fail, the platform 28 would pivot about the attachment pin 24. Thus, a hypothetical combination of Nilson and Fretwell et al. does not teach or suggest all of the claim limitations as set forth in Claims 1, 11, and 15. Moreover, a hypothetical combination of Nilson, Fretwell et al., and Corley, Jr., also fails to teach or suggest all of the claim limitation of the foregoing claims.

Corley, Jr., is cited in the final Office Action for the purpose of establishing U-shaped brackets at the end of parallel arms. Applicants respectfully disagree. Specifically, Corley, Jr., expressly teaches a "horizontal platform structure . . . includes sidewalls 35 which are *welded* to the exterior surfaces of the side plates 34 and . . . flanges 36." Column 4, lines 41-46 (emphasis added). Thus, Corley, Jr., does not teach U-shaped brackets at the end of parallel arms as alleged in the final Office Action, but instead teaches sidewalls 35 welded to an exterior surface of side plates and flanges 36 that are apparently similarly fashioned to the structure of the lift.

Moreover, even assuming that Corley, Jr., teach U-shaped brackets, a hypothetical combination of Nilson, Fretwell et al., and Corley, Jr., fails to teach or suggest a support device maintaining the lift platform in a second plane substantially parallel to the first plane if at least a portion of a first and second attachment arm assembly fails, as generally set forth in the independent claims of the present application. In that regard, Corley, Jr., teaches a lift

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platform 31 pivotally attached to lower and upper attachment arms 38 and 39 by pivot pins extending through flanges 36. Note that if one of the attachment pins coupling the attachment arms 38 and 39 to the flange 36 fails, the platform 31 would pivot about the other remaining attachment pin.

As an example, if the upper attachment pin extending between the flange 36 and the upper attachment arm 39 failed, the platform 31 would pivot about the lower attachment pin extending between the flange 36 and the lower attachment arm 38. Thus, because a hypothetical combination of Nilson, Fretwell et al., and Corley, Jr., fails to teach or suggest each and every claim element of Claims 1, 11, and 15, applicants respectfully submit that there can be no *prima facie* case of obviousness.

Torii has been cited by the final Office Action for the purpose of establishing use of "U-shaped brackets 43a, 43b between the ends of parallel link(s)." Applicants respectfully submit that the final Office Action had mistakenly characterized elements 43a and 43b as brackets. Specifically, elements 43a and 43b are not brackets, but are expressly described by Torii as *cams*. Moreover, there is no teaching or suggestion within Torii of support brackets for a ramp assembly, as generally set forth in Claims 1, 11, and 15. Thus, a hypothetical combination of Nilson, Fretwell et al., Corley, Jr., and Torii fails to teach or suggest all of the claim limitations of Claims 1, 11, and 15. Accordingly, applicants respectfully note that the final Office Action has failed to set forth a *prima facie* case of obviousness, as both required in the MPEP and by the Federal Circuit.

In view of the above remarks, applicants respectfully submit that the rejection of Claims 1-23 under 35 U.S.C. § 103(a) is improper because a *prima facie* case of obviousness has not been established. Moreover, applicants note that a hypothetical combination of Nilson, Fretwell et al., Corley, Jr., and Torii fails to teach or suggest all of the claim limitations as set

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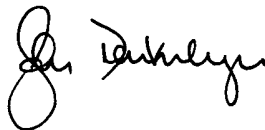
forth in Claims 1, 11, and 15. Accordingly, applicants respectfully requests that the rejection of all claims under 35 U.S.C. § 103(a) in view of a hypothetical combination of Nilson, Fretwell et al., Corley, Jr., and/or Torii be reversed.

IX. CONCLUSION

In view of the above remarks, Appellant respectfully submits that Claims 1-23 are patentable over the cited references of record. A decision reversing the Examiner's rejection in finding all pending claims to be in condition for allowance is respectfully requested.

Respectfully submitted,

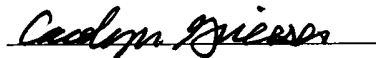
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